

# Minutes

## COVENANT COMPLIANCE POLICY UPDATE TASK FORCE

### SEPTEMBER MEETING

**DATE & TIME:** September 7, 2023 – 10:00 am – 12:00 pm

**LOCATION:** ECIA Community Center conference room and Via Zoom Videoconference

Participants: Board President Amelia Adair, Board Liaison Ken Howard, Architecture and Covenant Compliance Coordinator Mark Young, Architecture Committee Co-Chair John McDermon, Architecture Committee Member Gary Moran, One resident attended in person: Dave Rasch

Excused absences: Architecture Committee Co-Chair Katherine Mortimer

1. Approve September Agenda and August Minutes – approved with no changes
2. Board liaison update: None
3. Finalize Public Outreach Plan: Amelia reviewed plan

Goal: One more meeting in Oct, Present draft to the Board at Oct meeting, Public town hall in November

4. Review draft Compliance Policy. Report on homework, discuss suggestions and edit master document

John confirmed that he submitted the comment discussed at the August meeting to bylaws review committee via the online comment form

Reviewed and accepted work previously done on section 2 of the document

Discussion about grace period, when does it apply and from when is it triggered – agreed that it starts on the day of the First Notice of Violation

Reached an understanding that all actions begin with a “First Notice of Violation” and accelerated schedule shortens later parts of the process

Decided to use the term “First Notice” throughout the document, subsequently revised after public comment to use the language [or similar]: First Notice of Violation (hereafter First Notice)

Discussion about facilities violations as routine or expedited and the language to be used

Discussion about the process for handling expedited, urgent/emergency, repeat violations and the desire to allow the general manager the flexibility to respond

Discussion about attorney's interpretation of our ability to exclude people from use of facilities (attached), all agree that we need to have a process (this policy) before exercising this ability

Note: determined that is not a repeat violation unless it's a violation of the same rule

Discussion about a failure to cure the violation by the end of the grace period may be considered a repeat violation

Developed wording on paragraph describing authority to seek legal remedies

Discussion about two policies, one for architecture and one for facilities use or does a single policy satisfy the need with the concept that facility use violations are by their nature expedited or urgent. Decided to continue the development of a single policy

Discussion about the concept of expedited or urgent as two different levels of response or process branches, but both being triggers accelerated response process. Added the concept that staff/GM has the authority to resolve/cure the issue

Continued working on the language on the Procedures for Handling Expedited, Urgent, or Repeat Violations.

Who has the authority to "stop work"?

Lacking authority like the county has, it was offered that formally withdrawing approval of project is the formal mechanism that ECIA uses for enforcing "stop work"

Discussion about the use of compliance agreements, an authority that we have included in this policy that we have always had the authority to use, but have not used in the past.

Notice will include the items described in the Notice of Action para 3.1

Continue working on wording on the results of arbitration section of the document

Discussion about the applicability of this policy to Eldorado vs other areas such as Ladera, The Islands, Aldea. It was agreed that this is covered by this document specifically defining the governing documents this policy is enforcing (done).

## 5. Review draft Exhibits: Grace Periods and Fine Schedule options

Ran out of time to review during the meeting

6. Open Forum. Opportunity for public comment

Dave Rasch shared his experience from working at the Land Use Dept at the City and offered the following suggestions based on his experience.

First Notice of Violation (hereafter First Notice) since the term "Vilocation" is in use elsewhere in the document

Define expedited, urgent – could use the term "immediate" instead

Stables – has issues of personal property to be aware of

Required vs Shall as legal language

Concern about stop work vs authority to withdraw approval

7. Next meeting, homework


John – revisit his outline and process flow document to align with today's work  
Mark – review draft fine schedule

Everyone review attached (and on OneDrive):

- Draft Compliance Policy 9.2.23
- Draft Schedule of Fines, grace periods 9.2.23
- Classifications and Process Flow

## Attorney's Opinion:

**From:** a.adair@eldoradosf.org  
**Subject:** Covenants Compliance Review -- Legal opinion about suspending owners rights  
**Date:** September 5, 2023 at 15:54  
**To:** John McDermon jcm@alumni.ucla.edu, Katherine Mortimer katmort@comcast.net, Ken Howard k.howard@eldoradosf.org, Gary Moran gmoransf@gmail.com, Taylor Ward tward3212@gmail.com, Mark Young MYoung@hoamco.com  
**Cc:** John McDermon j.mcdermon@eldoradosf.org, Ciara Walsh CWalsh@hoamco.com, Joseph Gutierrez j.gutierrez@eldoradosf.org



FYI

**Our question to the ECIA's attorney regarding Suspension of members rights.** Article IV, Section 2(c) of the 1972 Declaration of Covenants states that the Association has the right to suspend the Members right to enjoy the common properties for "any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of the published rules and regulations."

In the case of a continuing violation, such as an uncovered RV or a shed built without approval too far away of the home, can our policy say something like "each day the violation remains uncorrected is a new violation", subject to suspension of rights to use the common areas, so that we can suspend an owner's rights for more than 30 days until the violation is corrected? Or are we limited to 30 days total, over the life of the community? 30 days annually?

We're adopting a fine schedule, but would also like to restrict folks from using the pool and dog park while an ongoing violation exists uncorrected. Obviously a one-time rule violation, such as propping a gate open or vandalizing a common area, would be limited to a 30 day maximum suspension, since those would not be continuing in nature. Let us know your thoughts, thanks.

### **Attorney's Answer:**

Although an argument can be made both ways, I think it is reasonable to say that every day an item remains on a Lot is a new infraction and, therefore, subject to a 30-day suspension. There is similar language in Article III, Section 2(b) of the Bylaws as well regarding the suspension of a Member's right to use the Common Properties. However, I would not suspend an Owner's rights for 10 months because a violation remained for 10 days. A better way to phrase it may be that if the violation remains uncured for 30 days, the continuance of the violation is considered to be another infraction under the governing documents and subject to another 30-day suspension.